Supreme Court, U. S.
FILED
MAY 15 1997
CLERK

No. 96-1715

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1996

STATE OF ARIZONA,
Petitioner,

-vs-

DANIEL RICHCREEK,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

LAWRENCE S. MATTHEW
Deputy Public Defender
11 West Jefferson, Suite 5
Phoenix, Arizona 85003-2302
Telephone: (602) 506-7923

Attorney for *RESPONDENT*

QUESTION PRESENTED

Does an unreasonable search and seizure occur when a citizen driving an automobile is stopped, detained, questioned, and ordered to produce a license and registration, not on the basis of particularized suspicion of criminal activity, but only a mere hunch that the person might know something about an automobile accident that occurred more than 20 minutes before the citizen drove past the accident scene?

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

OPINION BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISIONS INVOLVED..... 1

STATEMENT OF THE CASE..... 2

REASONS FOR DENYING THE WRIT..... 4

The Issue Petitioner Seeks This Court to Address is Not an Issue Decided by the Arizona Supreme Court.

CONCLUSION..... 7

TABLE OF AUTHORITIES

Page

CASES

Delaware v. Prouse, 440 U.S. 648 (1979)..... 7

State v. Richcreek, ___ Ariz. ___, 930 P.2d 1304 (1997)..... 5, 6

Terry v. Ohio, 392 U.S. 1 (1968)..... 7

Warden v. Hayden, 387 U.S. 294 (1967)..... 7

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. IV..... 6, 7

OPINION BELOW

Respondent concurs with the Statement of the Opinion Below as set forth in the Petitioner's petition.

JURISDICTION

Respondent concurs with the Statement of Jurisdiction as set forth in the Petitioner's petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent concurs with the Statement of Constitutional Provisions Involved as set forth in the Petitioner's petition.

STATEMENT OF THE CASE

At 1:25 a.m. on April 9, 1994, police officers were investigating a single-vehicle roll-over accident along the side of a rural road. No one was found at the scene.

During the investigation, two or three vehicles drove by the scene and slowed to observe the wreckage as they passed. Then, at approximately 1:45 a.m., Respondent (Richcreek) drove by, slowing almost to a stop, pulling over to the side of the road as he slowed. Richcreek then quickly accelerated and left.

One of the officers, DeHaven, had a hunch that Richcreek might be the missing driver of the wrecked car, or might be a relative or someone who knew something about the accident.

DeHaven followed Richcreek, activated his emergency lights, and pulled him over. Richcreek was not suspected of criminal activity nor was he seen violating any traffic laws.

After stopping, Richcreek got out of his car and instead of walking straight back to DeHaven he moved somewhat toward the officer, but also somewhat toward the street. DeHaven inquired of Richcreek why he had pulled over at the scene of the accident. Richcreek responded that he believed that the people at the scene might need some help.

Richcreek was willing to talk about the accident under investigation but DeHaven thought Richcreek did not want to talk about himself. DeHaven told Richcreek to produce his license and registration. Richcreek complied. DeHaven ran a check on the auto driven by Richcreek and learned it was reported as stolen.

REASONS FOR DENYING THE WRIT

The Issue Petitioner Seeks This Court to Address is Not an Issue Decided by the Arizona Supreme Court.

The petitioner (State of Arizona) phrases the question presented as whether a stop of an automobile is unconstitutional if done in the absence of articulable suspicion of criminal activity. But the State reveals the true thrust of the question it is raising in the body of its petition.

The petition intimates that the Arizona Supreme Court's ruling in this case was a sweeping pronouncement that a vehicle may never be stopped absent particularized suspicion of criminal activity. Hence, the true question the State desires to present is "[Whether] the police must have a `founded suspicion of criminal activity' before they can ***ever*** stop an automobile?" (Petition at 7, emphasis added).

The problem with the State's request for review in this case is that the State reads the Arizona high court's decision too

broadly. The Court below never ruled that a vehicle stop must always be accompanied particularized suspicion of criminal activity. The Arizona Supreme Court succinctly stated the scope of its decision:

> The question raised in this case, then, is **how much of an intrusion** by police is permissible when the individual to be stopped is not suspected of being involved in criminal activity?

State v. Richcreek, ___ Ariz. ___, ___, 930 P.2d 1304, 1306 (1997), and pet. at A-5. (Emphasis added).

The analysis by the Court below further reveals the limited scope of the opinion:

> [Richcreek] did not claim ownership of a seemingly abandoned vehicle. There was no reason to believe he was engaged in criminal activity and yet he was followed, required to pull over **and to produce his papers**.
>
> * * *
>
> [C]ases discussing the police power to stop vehicles, detain, **and question** persons have required reasonable suspicion in connection with a crime. . . .

Id. at __, 930 P.2d at 1307 and pet. at A-8. (Emphasis added).

The Arizona Supreme Court concludes its opinion by stating:

> The idea that police may follow and pursue automobiles driven and occupied by persons not suspected of any criminal activity and may pull them over, detain them, **and question them** opens up vistas which we think go far beyond what is permitted by the Fourth Amendment.
>
> The officer's pursuit, stop, detention, **and request for [Richcreek's] identification papers** were impermissible under the Fourth Amendment.

Id. at ___, 930 P.2d at 1308-09 and pet. at A-11 thru A-13. (Emphasis added).

Clearly, the petitioner overstates the holding of the Arizona Supreme Court. The narrow issue decided below concerned the permissible scope of intrusion when a driver is stopped for reasons less than suspicion of criminal activity and not whether founded suspicion of criminal activity must always exist before a vehicle may be stopped by the police?

This issue was not before the court below and would not properly be before this Court if certiorari is granted.

Finally, the issue decided below was correctly decided.

This Court has held that the scope of an intrusion following any stop must be "'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Terry v. Ohio,* 392 U.S. 1, 19 (1968) (quoting *Warden v. Hayden,* 387 U.S. 294, 310 (1967) (Fortas, J., concurring).

The application of the above reasoning is made manifest in *Delaware v. Prouse*, 440 U.S. 648 (1979), where this Court held that the police violate the Fourth Amendment when they stop a driver on less than articulable and reasonable suspicion of criminal activity and check his license and registration.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

LAWRENCE S. MATTHEW
Deputy Public Defender
11 West Jefferson Ste. 5
Phoenix, Arizona 85003-2302
Telephone: (602) 506-7923
Counsel for *Respondent*